IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11216 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIGVIJAYSINH D ZALA

Versus

LIMBDI MUNICIPALITY

Appearance:

1. Special Civil Application No. 11216 of 1994

MR MANISH R RAVAL for Petitioner No. 1

MR MINESH C DAVE for Respondent No. 1

MR LB DABHI A.G.P. for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/06/2004

ORAL JUDGEMENT

The petitioner is an employee of respondent no. 1 namely, Limbdi Municipality. Respondent no. 1 by

passing Resolution no. 6/134 dated 29th December, 1993, resolved to promote petitioner on the post of Octroi Recovery (junior clerk). The said Resolution however, was not accepted by respondent no. 2 and he exercised power under Section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") to suspend the execution of the same. He, therefore, by intimation dated 16th February, 1994 addressed to respondent no. 1 stated that considering the fact that respondent no. 1 was experiencing financial burden, it was not possible to promote the petitioner to the said post. According to him, by promoting the petitioner to the said post, respondent no. 1 had completely overlooked and ignored the directions issued by the Finance Department of the State. He, therefore, called upon respondent no. 1 to appear before him on 28th February, 1994 and to explain why the said Resolution should not be stayed. The proceedings were numbered as Municipal Case No. 4 of 1994. Ultimately, by order dated 26th May, 1994, respondent no. 2 held that Resolution no. 6/134 relating to the promotion of the petitioner to the post of junior clerk was illegal and he ultimately quashed the same by exercising power under Section 258 (1) of the Act. It is this order which is now under challenged by the petitioner.

2. Mr. M.R. Rawal learned advocate for the petitioner has submitted that this petition deserves to be allowed solely on the ground that the beneficiary of the said Resolution was the petitioner and when respondent no. 2 passed the impugned order, no opportunity of hearing was given to him. He has also produced copies of the impugned order and the relevant Resolution and the same are ordered to be taken on the record. Inspite of these submissions, he has also placed reliance on two decisions of this Court.

2.1. Mr. Dave learned advocate appearing for respondent no. 1 has supported the submissions of Mr. Raval. Mr. L.B. Dabhi learned A.G.P. appearing for respondent no. 2 has however, contested the petition and has submitted that when respondent no. 1 is heard, there is no need to hear respondent no. 2, because it is the Resolution of respondent no. 1 which is being set aside by respondent no. 2 under Section 258 of the Act.

3. Having carefully gone through the record of this petition as well as having considered the submissions of the learned advocate for the parties, it clearly appears that by Resolution bearing No. 6/134, the petitioner was sought to be promoted to the post of Octroi Recovery

(junior clerk) by respondent no. 1. However, respondent no. 2, intervened on the ground that there was direction issued by the Finance Department of the State that no transaction having such financial implication be undertaken. In other words, according to him, the decision of respondent no. 1 was illegal because of the financial burden experienced by respondent no. 1. He, therefore, thought it fit to exercise power under Section 258 of the Act. It is also submitted that before taking final decision respondent no. 2 had issued notice to respondent no. 1 calling upon him to show cause why the said Resolution should not be cancelled. Admittedly, no notice was issued to the petitioner though he was vitally concerned with the same. If the Resolution was quashed and set aside, it was he who would be directly affected. Despite that respondent no. 2 had not thought it fit to grant him hearing by issuing notice to him. This Court [Coram : C.K. Thakkar, J.] in similar circumstances, has held that the person likely to be adversely affected with the exercise of powers by the Collector under Section 258 of the Act, is required to be heard before any final decision is taken. It is held that if no such notice is issued, it would amount to violation of principles of natural justice. This decision has been referred to in the case of R.C. Gajjar & Anr. v. State of Gujarat & Ors. reported in 1996. (1) G.L,H. p. 276. The same learned Judge has taken similar view in another case of B.G. Sapariya. Development Board, Mahuva Municipality v. Pradipkumar Pujari, Collector, Bhavnagar reported in (2001) 2 G.L.R. p.1115. Considering the proposition of law laid down by this Court in the aforesaid two decisions, it is very clear that respondent no. 2 ought to have issued notice to the petitioner before exercising power under Section 258 (1) of the Act, and cancelling the Resolution granting promotion to the petitioner. If that be so, it is also clear that respondent no. 2 has completely violated the principles of natural justice. In that view of the matter, the petitioner is required to be given adequate opportunity before any decision is taken by respondent no. 2. In view thereof, the impugned order passed by respondent no. 2 dated 26th May, 1994 is required to be quashed and set aside and it is hereby, ordered to be quashed and set aside. Respondent no. 2 is directed to reconsider the issue by issuing notice to respondent no. 1 as well as the petitioner and after granting opportunity of personal hearing to them, should take further decision in the matter. This exercise to be carried out as early as possible and not later than 30th November, 2004.

This petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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